

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6396 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No.

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TALAJI @ TALIYO CHELAJI

THAKORE

Versus

COMMISSIONER OF POLICE

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Appearance:

MR ASHWIN V BHATT for Petitioner

MR.NEEGAM SHUKLA, APP, for Respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 11.4.1996 passed by the Police Commissioner, Ahmedabad City, detaining the petitioner under Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on the same day i.e. 11.4.1996 and since then the petitioner is under detention lodged in Bhavnagar District Jail, Bhavnagar.

This Special Civil Application was filed on 23.8.1996 and on 26.8.1996 Rule returnable for 23rd September, 1996 was issued. So far no reply has been filed nor any affidavit-in-reply has been filed by the Detaining Authority. The grounds of detention enclosed with the detention order show that at Police Station, Sabarmati, 4 cases under Prohibition Act were registered against the petitioner during 1995-96. Out of these 4 cases 3 cases are of the year 1995 which are pending in the Court and in 4th case the investigation was pending at the time when the detention order was passed. In these 4 cases the quantity of country liquor involved is 13 to 40 litres. The Detaining Authority has thus noted the antisocial activities of the petitioner and besides these 4 cases it has also taken notice of two incidents dated 22.3.1996 and 30.3.1996 with reference to which statements of four witnesses in all have been recorded. With regard to incident of 22.3.1996 it has been stated that while the witness was passing near Ranip Hanumanpura the petitioner came to the witness telling that he was showing fear of the police to his customers and gave blows in his abdomen and the chest of the witness, the witness cried for help and crowd was collected, the petitioner ran after the people of the crowd with knife and the members of the crowd became helter-skelter and thus there was disorder of traffic on the road. About the incident dated 30.3.1996 it has been stated by the witness that while he was passing through Ranip Vanjarani Chali he was intercepted by the petitioner apprehending the witness to be the police informant the petitioner beaten the witness publicly, the witness cried for help and the members of the public were collected and at that time the petitioner ran after the members of the public with knife. There was helter-skelter of the people and the routine life was disturbed. The version of these two witnesses is supported by other two witnesses. All the four witnesses have stated that they were afraid of the petitioner and therefore their identity be kept secret for the reasons of their security. The Detaining Authority found that their apprehension is correct and privilege is claimed to keep the identity secret under section 9(2). The Detaining Authority has considered that under section 93 of the Bombay Prohibition Act, the proceedings of the externment may not serve the purpose and that the petitioner was headstrong person, was beating innocent people and created an atmosphere of terror, was a bootlegger and was in possession of unauthorised liquor. The reference has also been made to the unfortunate event of latthakand which had happened in past with which the petitioner is not concerned. The latthakand reference has been made only to show the evil

consequences of the consumption of country liquor.

I have considered the submissions made on behalf of both the sides. I need not deal with all the grounds on which the detention order is challenged because I find that the allegations as have been levelled do not constitute a case of breach of public order. I have already considered the similar allegations in Special Civil Application No. 3879 of 1996 decided on 4.10.1996 and after considering the ratio of the judicial pronouncements by the Supreme Court and this Court it has been found that the allegations such as levelled in the present case do not constitute the case of breach of public order and at the most it is a case of breach of law and order. The reasoning on which the Special Civil Application No. 3879 of 1996 has been allowed applies with full force to the facts of the given case. It is held that the detention order as passed in this case was not at all warranted.

Accordingly this Special Civil Application is allowed. The detention order dated 11.4.1996 passed by the Police Commissioner, Ahmedabad City is hereby quashed and set aside. The detention of the petitioner is declared to be illegal and the respondents are directed to release the petitioner-detenu and set him at liberty forthwith if not required in any other case. Rule made absolute.

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